

which he may have well been proved to be innocent is wrong. The fact remains that most people that are arrested are essentially poor people. The bulk of these people cannot afford the fees of a bondsman to release them from prison. The bulk of these people, there is no reason to keep in prison. Once again, with the bulk of these people there is a hardship in keeping them in prison in that the man is usually the breadwinner for his family and the family goes without the breadwinner and it also goes without the head of the household. The man may be in prison anywhere from up to three to four months, as all the attorneys here know, and then brought to trial at which time the case is either nolle prosequi because they figure he spent enough time in jail already or else it results in acquittal. In any event, the man is incarcerated for a period of time without a trial. This simply shifts the burden on the other foot. It makes it necessary for the State to establish that the man must be incarcerated or else he will not be available for trial.

Now, I point out to you that we do not use the word "accused" for it is a simple matter that you can do the same thing with witnesses. This makes it a right, not a privilege, to be released from incarceration without a trial.

THE PRESIDENT: Delegate Kiefer, will you wait just a moment.

Delegate Grant, the Chair has a question. I assume that this is intended to refer only to a person awaiting trial for a crime, is it? Is this correct?

DELEGATE GRANT: That is correct.

THE PRESIDENT: It does not say so. I wonder if —

DELEGATE GRANT: It said a person awaiting trial. This could be either a person held as a material witness or else a person being held as a prospective defendant at the trial.

THE PRESIDENT: But not a person awaiting trial of a civil case?

DELEGATE GRANT: No, not a person awaiting trial of a civil case. Subject to those exceptions in which there are civil proceedings, which are criminal —

THE PRESIDENT: I just raised the question to ask whether you think your amendment ought to indicate that it is not intended to be applicable in civil proceedings.

DELEGATE GRANT: No, Mr. President, I do not think it should be changed. I can envision cases where you may have a ne exeat writ issued if they would wish to restrain a person. It would be a general application.

THE PRESIDENT: For what purpose does Delegate Gilchrist rise?

Delegate Grant, will you yield to a question?

DELEGATE GRANT: Yes.

DELEGATE GILCHRIST: In whose judgment is "restraint as necessary" placed? Is this an ex post facto thing and is this to be determined at the time and in whose judgment?

THE PRESIDENT: Delegate Grant.

DELEGATE GRANT: It would be determined by the person before whom the person is brought to be incarcerated. In other words, it is necessary when you are arrested to be brought before either a committing magistrate or a judge or some other official. The same official that would establish bond or other pre-trial restraint would be the one who would judge this. It would be subject, of course, to administration by the court by rule.

THE PRESIDENT: Delegate Gilchrist.

DELEGATE GILCHRIST: Would it also be subject to appeal?

THE PRESIDENT: Delegate Grant.

DELEGATE GRANT: It would certainly be subject to appeal in the nature of a writ of habeas corpus.

THE PRESIDENT: Delegate Kiefer.

DELEGATE KIEFER: Mr. President and ladies and gentlemen of the Convention, the Committee on Personal Rights and Preamble adopted as part of its recommendations in R&P-1 the language that was read to you by Delegate Grant. This was the subject of a minority report which turned out to be in a sense a majority report because nine members of the Committee were on it. This was led by Delegate Child, and I feel that, sir, I would like to yield the floor to Delegate Child.

THE PRESIDENT: Delegate Child.

DELEGATE CHILD: Mr. President, we already have in the bill of rights the provision that excessive bail shall never be required. This would fix another bail proposition, and it was exactly for that